

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SOUTHEASTERN LEGAL
FOUNDATION, INC.,

Plaintiff,

V.

UNITED STATES
DEPARTMENT OF JUSTICE,

Defendant.

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) CIVIL ACTION
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) FILE NO. _____
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COMPLAINT

Plaintiff Southeastern Legal Foundation, Inc. (SLF), for its Complaint against Defendant United States Department of Justice (DOJ), states as follows:

INTRODUCTION

1. The Freedom of Information Act (the FOIA), 5 U.S.C. § 552, enacted in 1966, provides the public with a right of access to federal agency records.

2. The people must know what the government is doing. “Open government has been recognized as the best insurance that government is being conducted in the public interest.”¹ Our Founding Fathers’ commitment to open

¹ *Am. Fed'n of Gov't Emp.'s v. Rosen*, 418 F. Supp. 205, 207 (N.D. Ill. 1976).

government and the public's right to information can be seen in the First Amendment, which "protects not only the right of citizens to speak and publish, but also to receive information."² The FOIA is "an affirmative congressional effort to give meaningful content to constitutional freedom of expression." *See* S. Rep. No. 93-854, at 153-54 (May 16, 1974).

3. This is an action brought pursuant to the FOIA to compel Defendant to produce records responsive to an outstanding FOIA request submitted to Defendant on May 24, 2019.

4. In its FOIA request, SLF sought public records regarding, reflecting, or related to any investigation or finding by the Foreign Intelligence Surveillance Court (FISC), or any other court, any licensing bar, any disciplinary committee, or any other entity that any attorney violated or did not violate the FISC Rules of Procedure or applicable Rules of Professional Conduct in connection with the Carter Page FISA application and renewals or the Section 702 violations the government orally advised the FISC about in October 2016.

5. Thirty-one days (not including weekends and federal holidays) have lapsed since Defendant received SLF's FOIA request. Defendant has failed to meet

² *Providence Journal Co. v. FBI*, 460 F. Supp. 762, 776 (D.R.I. 1978) (overturned on other grounds).

the statutory deadline for its response in the form of a determination to the FOIA request dated May 24, 2019 and received by Defendant on June 3, 2019, because it failed to respond within 30 days (not including weekends and federal holidays). *See* 5 U.S.C. § 552(a)(6)(A)(i) (providing that Defendant has 20 days excluding weekends and federal holidays to provide a determination); *see also* 5 U.S.C. §552(a)(6)(B)(i) (allowing Defendant to request a 10 day extension).

6. Accordingly, SLF files this lawsuit to compel Defendant to comply with the FOIA.

THE PARTIES

7. Plaintiff Southeastern Legal Foundation is a national nonprofit, public interest law firm and policy center that advocates constitutional individual liberties, limited government, and free enterprise in the courts of law and public opinion. SLF's programs include analysis, publication, and a transparency initiative seeking public records relating to potential attorney misconduct before the FISC related to the Carter Page FISA application and renewals and Section 702 violations.

8. Defendant Department of Justice is a federal agency headquartered in Washington, D.C. On information and belief, Defendant has possession, custody, and control of the records to which SLF seeks access.

JURISDICTION AND VENUE

9. SLF brings this lawsuit pursuant to the FOIA. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B), because this action is brought in the Northern District of Georgia where SLF has its principal place of business, and pursuant to 28 U.S.C. § 1331, because the resolution of disputes under the FOIA presents a federal question.

10. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B), because this action is brought in the Northern District of Georgia where SLF has its principal place of business, and pursuant to 28 U.S.C. § 1391(e), because a substantial part of the events or omissions giving rise to the claim occurred in the Northern District of Georgia.

FACTUAL BACKGROUND

11. In a letter dated May 24, 2019, SLF submitted a FOIA request by certified mail to Defendant (the FOIA Request).

12. In the FOIA Request, SLF sought the following records:

All records regarding, reflecting, or related to any orders, opinions, decisions, sanctions, or other records related to any investigation or finding by the Foreign Intelligence Surveillance Court (FISC), any other court, any state licensing bar, any disciplinary committee, or any other entity, that any attorney violated the FISC Rules of Procedure or applicable Rules of Professional Conduct in connection with the Carter Page FISA application and

renewals or the Section 702 violations the government orally advised the FISC about on October 24, 2016;

All records regarding, reflecting or related to any orders, opinions, decisions, sanctions, or other records finding by the FISC, any other court, any state licensing bar, any disciplinary committee, or any other entity, that any attorney violated or did not violate FISC Rule of Procedure 13, specifically, in connection with the Carter Page FISA application and renewals or the Section 702 violations the government orally advised the FISC about on October 24, 2016; and

All records regarding, reflecting or related to any referral or complaint made to any attorney disciplinary body for conduct related to the Carter Page FISA application and renewals or the Section 702 violations the government orally advised the FISC about on October 24, 2016.

13. SLF sought a waiver of search, review, and reproduction fees pursuant to the FOIA (5 U.S.C. § 552(a)(4)(A)(iii)) because the information sought was in the public interest, was likely to contribute to public understanding of the operations and activities of government, and because SLF had no commercial interest in the information.

14. The United States Postal Service Tracking System shows that Defendant received the FOIA Request on June 3, 2019.

15. Defendant acknowledged receipt on June 3, 2019, by signing the certified mail return receipt.

16. At the time of this Complaint, 31 days, excluding weekends and federal holidays, have now lapsed since Defendant acknowledged receipt of the FOIA Request on June 3, 2019.

17. Pursuant to 5 U.S.C. § 552(a)(6)(C)(i), SLF is deemed to have exhausted its administrative remedies with respect to the FOIA Request.

18. As of the date of this Complaint, Defendant has failed to (i) produce the requested records or demonstrate that the requested records are lawfully exempt from production; (ii) notify SLF of the scope of any responsive records Defendant intends to produce or withhold and the reasons for any withholdings; or (iii) inform SLF that it may appeal any adequately specific, adverse determination.

COUNT I
(Violation of the FOIA, 5 U.S.C. § 552)

19. SLF realleges paragraphs 1 through 18 as if fully stated herein.

20. Defendant is in violation of the FOIA by failing and/or refusing to employ search methods reasonably likely to lead to the discovery of records responsive to SLF's request and, accordingly, failing and/or refusing to produce any and all non-exempt records responsive to the request.

21. SLF is being irreparably harmed by Defendant's violation of the FOIA and will continue to be irreparably harmed unless Defendant is compelled to comply with the FOIA.

22. Pursuant to 5 U.S.C. § 552(a)(6)(C)(i), SLF is deemed to have exhausted its administrative remedies with respect to the FOIA Request because Defendant was required to make a final determination of SLF's FOIA Request within the time limits set by FOIA. Accordingly, determination was due by July 15, 2019 at the latest.

23. Because Defendant failed to make a final determination on SLF's FOIA Request within the time limits set by the FOIA, SLF is deemed to have exhausted its administrative appeal remedies.

PRAYER FOR RELIEF

24. Enter an immediate order directing Defendant to preserve all records potentially responsive to the FOIA Request, and prohibiting Defendant, its employees, agents, or representatives from transporting, concealing, removing, destroying, or in any way tampering with records potentially responsive to said request;

25. Enter an order directing Defendant to conduct searches for any and all records responsive to the FOIA Request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to the FOIA Request;

26. Enter an order directing Defendant to produce, by a certain date, any and all non-exempt records responsive to the requests and a *Vaughn* index of any responsive records withheld under claim of exemption;

27. Enter an order enjoining Defendant from continuing to withhold any and all non-exempt records responsive to the FOIA Request;

28. Award reasonable attorneys' fees, costs, and expenses; and

29. Grant any and all other relief as this Court deems just and proper.

Respectfully submitted this 16th day of July, 2019.

Southeastern Legal Foundation

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